



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

#7

13 NOV 2006

Leonard C. Mitchard  
Nixon & Vanderhye  
901 North Glebe Road  
11<sup>th</sup> Floor  
Arlington, VA 22203

In re Application of :  
McLAUGHLIN et al. :  
Application No.: 10/530,862 :  
PCT No.: PCT/AU03/01349 :  
Int. Filing: 13 October 2003 : DECISION ON PETITION  
Priority Date: 11 October 2002 :  
Attorney Docket No.: 4132-5 :  
For: A SUPPORT APPARATUS :  
:

This decision is issued in response to applicants' "Renewed Petition under 37 CFR 1.47(a)" filed 16 October 2006 to accept the application without the signature of joint inventor, Neil McLaughlin. The requisite \$200 petition fee has been submitted.

**BACKGROUND**

On 13 October 2003, applicants filed international application PCT/AU03/01349, which claimed a priority date 11 October 2002. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 22 April 2004. Pursuant to 37 CFR 1.495, the period for paying the basic national fee in the United States expired 30 months from the priority date, 11 April 2005.

On 11 April 2005, applicants filed a transmittal for entry into the national stage in the United States, which accompanied by, *inter alia*: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a copy of the international application; and a preliminary amendment.

On 12 December 2005, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. The notification set a two-month time limit in which to respond.

On 13 March 2006, applicants filed a petition under 37 CFR 1.47(a). In a decision dated 14 June 2006, applicants' petition under 37 CFR 1.47(a) was dismissed without prejudice.

Application No.: 10/530,862

On 16 October 2006, applicant filed the present renewed petition under 37 CFR 1.47(a).

### DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and behalf of the non-signing joint inventor. Items (1) and (3) were satisfied in the previous Decision on Petition mailed 14 June 2006.

A review of the present petition and the accompanying papers reveal that applicants have satisfied item (2), in that the applicants have shown that a bona fide attempt was made to present the application papers, including the specification, claims, and drawings to Neil McLaughlin. The steps are sufficient to show that Neil McLaughlin has refused to execute the application.

As to item (4), a newly executed oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and behalf of the nonsigning joint inventor has not been included with the present petition. As stated in the previous decision, the declaration submitted 13 March 2006 fails to comply with 37 CFR 1.497(a)-(b), in that, the declaration presented has the information for Neil McLaughlin crossed through. Further, any changes made in ink in the application or oath prior to signing should be initiated and dated by the applicants prior to execution of the oath or declaration. The Office will not consider whether non-initialed and/or non-dated alteration were made before or after signing of the oath or declaration but will require a new oath or declaration. See MPEP 605.04(a). Therefore, a newly executed declaration is required.

For the above reasons, it would not be appropriate to accept this application without the signature of Neil McLaughlin at this time.

### CONCLUSION

The renewed petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.

Any further correspondence with respect to this matter should be addressed to:  
Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box

Application No.: 10/530,862

1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Anthony Smith

Anthony Smith  
Attorney-Advisor  
Office PCT Legal Administration  
Tel.: 571-272-3298  
Facsimile: 571-273-0459